IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION.

COMPANY PETITION No.66/2000.

M/s. Jubilant Organosys Ltd. Petitioner.

V/s.

M/s. Even Coatings Ltd. Respondent.

Mr G. D.Utangale with Ms Prachi P. Rane i/b
M/s. Utangale & Co. for the Petitioner.

None for the Respondent.

CORAM: V.C. DAGA,J.

DATED: 28th FEBRUARY,2007.

P.C.:-

1. Heard the learned counsel for the petitioner. None for the respondent.

2. Perused petition.

3. Petitioner has invoked jurisdiction of this Court under Sections 433 and 434 of the Companies Act, 1956 to seek winding up of "M/s. Even Coatings Limited" (hereinafter referred to as "respondent company").

4. The factual matrix on which petition is based, reveals that the petitioner company has sold, supplied and delivered, to the respondent company, goods as incorporated in annexure 'A' of the petition. The details of which suggest that the value of the goods sold and supplied under various Invoices and delivery challans were not paid and the debt remained unsatisfied. With the result, the petitioner was required to demand outstanding dues vide it's letters 20th April, 1996, 24th June, 1996, 24th February, 1997 and 6th April, 1998. The respondent company has acknowledged it's liability vide letters dated 8th April, 1996, 14th May, 1996, 24th June, 1996, 14th August, 1996, 27th January, 1997 and 10th February,1997. Since the respondent did not pay outstanding dues, the petitioner company was required to issue statutory notice dated 6th April, 1998 under Section 434 of the Companies Act, 1956. The said notice was sent on the registered address of the respondent company by the petitioner. The same is returned by the Postal Authority with the endorsement "Not claimed". In order to avoid technical objection, the petitioner published statutory notice in the newspaper. As such, service of notice cannot be doubted. However,

there was no reply to the said notice.

5. Consequently, petitioner was required to invoke jurisdiction of this Court to seek winding up of the company.

6. After admission of this petition, notice was again issued to the respondent company. Inspite of service of notice nobody has appeared on behalf of the respondent company. No reply is filed to answer the petition. Under these circumstances, there is no dispute with regard to the debt due and recoverable from the respondent company.

7. In the above view of the matter, the respondent is bound to discharge it's liability set up in the winding up petition. In other words, assertion made in the petition which are supported by the documents placed on record have remained uncontroverted. In that sense the legal presumption that arises against the respondent company that it is unable to pay it's debts has remained unrebutted. The petitioner has made out a case to invoke the jurisdiction under Section 434 (1) (a) of the Companies Act, 1956. Under these circumstances, the respondent company is liable

to be wound up.

8. In the result, the petition is made absolute in terms of prayer clause (a) and (b) with no order as to costs.

[V.C.DAGA,J]